APPENDIX A

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

1. Section 102 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3102, provides in relevant part:

As used in this Act (except that in titles IX and XIV the following terms shall have the same meaning as they have in the Alaska Native Claims Settlement Act, and the Alaska Statehood Act)—

(1) The term "land" means lands, waters, and interests therein.

(2) The term "Federal land" means lands the title to which is in the United States after the date of enactment of this Act.

(3) The term "public lands" means land situated in Alaska which, after the date of enactment of this Act, are Federal lands, except—

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

Section 801 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3111, provides:

The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal

knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3120, provides in relevant part:

(a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide

the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

ALASKA NATIVE CLAIMS SETTLEMENT ACT

Section 4 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1603, provides in relevant part:

(a) All prior conveyance of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

APPENDIX B

BRIEF OF APPELLEES JAMES G. WATT, *et al.* IN *GAMBELL I*, pp. 47-49

III

EVEN IF THE VILLAGES PREVAIL BEFORE THIS COURT, THE LEASES SHOULD NOT BE VOIDED

The villages assert (Br. 40-41) that they are entitled to have the leases set aside if they prevail on either of their theories. While the Court's power to set aside leases is unquestioned, doing so here would be inappropriate even if the villages' appeal has merit.

* * * *

With respect to the ANILCA claims, we have shown that, even if that statute applies, the Secretary has already taken the steps is requires, though under the authority of other states (see *supra* at 43-47). It is therefore unnecessary to void the agency action in question. See *Denton v. Secretary of the Air Force*, 483 F.2d 21, 28 (9th Cir. 1973), *cert. denied*, 414 U.S. 1146 (1974). Should the Court find it appropriate to order the Secretary to carry out the procedures of Section 810, there is no need to undo what has already been done. The proper role for the court is to simply maintain the status quo while the Secretary does whatever is necessary to comply. See *California v. Watt*, 683 F.2d 1253, 1266 (9th Cir. 1982), *cert. granted*, 51 U.S.L.W. 3818 (May 16, 1983).

Thus, the highly disruptive remedy of voiding the leases should not be afforded even if the villages prevail.

APPENDIX C

BRIEF OF APPELLEES ARCO ALASKA, INC., *et al.* IN *GAMBELL I*, pp. 47-50

III. The Remedy Demanded By Plaintiffs Is Inappropriate.

Plaintiffs assert that, if this Court finds either of their theories meritorious, then the Court must at once void the leases. Plaintiffs will not be satisfied if the Court, assuming irreparable harm can be shown, enjoins exploration and development activity pending resolution of plaintiffs' aboriginal title claim at trial or pending the Secretary's explicit compliance with § 810 of ANILCA. Plaintiffs' goal is to obtain the relief that will have maximum disruptive effect on the lease sale.

A similar issue was presented to this Court, and decided adversely to plaintiffs, in *California v. Watt*, 683 F.2d 1253, 1266 (9th Cir. 1982), *cert. granted*, 51 U.S.L.W. 3818 (U.S. May 16, 1983). That case involved the question whether the Secretary was required, before selling leases, to make a determination that the lease sales were consistent with the adjacent state's coastal management plan. The Court held that he was so required. This Court affirmed the district court's order insofar as it enjoined development activities until such time as the Secretary made the required consistency determination. The district court had also voided the bids for the tracts at issue and ordered the deposits returned to the bidders. This Court vacated that portion of the district court's order, agreeing with the defendants that

> "cancellation of bids after their contents have been revealed is excessive, punitive, unprecedented, and destroys the essence of secret bidding procedures, thus causing the loss of millions of dollars the bidders spent compiling the data for the bids. . . . [S]uch drastic measures should

> be deferred at least until it is finally decided whether Lease Sale 53 can go forward in its present form."

683 F.2d at 1266. For the same reasons, if plaintiffs should prevail on this appeal, this Court should not void the leases, but should do no more than, at most, enjoining environmentally sensitive operations pending the conclusion of subsequent proceedings.

* * * *

B. The ANILCA Claim

Plaintiffs' ANILCA claim is, for purposes of determining the appropriate provisional remedy, equivalent to the Coastal Zone Management Act claim in *California v. Watt:* plaintiffs argue that the Secretary did not undertake certain procedures required by statute to be completed before the lease sale went forward. If this Court should hold that § 810 of ANILCA applies to the OCS, the appropriate remedy would be the same as that ordered in *California v. Watt:* to enjoin further activities until the Secretary completes the procedures required by the statute, if irreparable harm is shown, see *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982). Plaintiffs' assertion that the Secretary will perform the procedures in bad faith, Appellants' Brief at 42, has no merit. The Court must assume that an administrative agency will comply with the law. *See SEC v. Chenery Corp.*, 332 U.S. 194, 199-200 (1947) (on remand, SEC is free to arrive at the same decision if it applies the proper criteria).